

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

JERRY SANDERS,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting Commissioner
of the Social Security Administration,

Defendant.

CAUSE NO.: 2:19-CV-501-TLS-JPK

OPINION AND ORDER

This matter is before the Court on the Plaintiff's Motion for Approval of Attorney Fees Pursuant to 42 U.S.C.A. Section 406(b) [ECF No. 30], filed on December 5, 2022. The Defendant responded that she does not oppose the motion. ECF No. 32. For the reasons stated below, the Motion is GRANTED.

BACKGROUND

On June 29, 2016, the Plaintiff filed an application for disability insurance benefits, alleging disability beginning on June 3, 2013. AR 112–13, ECF No. 14. After the Administrative Law Judge issued an unfavorable decision, the Plaintiff filed a Complaint [ECF No. 1] in this Court. The Court reversed and remanded the case for further proceedings. ECF No. 25. On October 1, 2021, the Court awarded the Plaintiff's attorney Equal Access to Justice Act (EAJA) fees in the amount of \$6,500.00. ECF No. 28. Ultimately, the Social Security Administration awarded the Plaintiff past-due benefits, twenty-five percent of which is \$27,100.03. *See* Notice of Award 3, ECF No. 30-1; Pl. Mot. 2, ECF No. 30.

In the instant Motion, the Plaintiff's attorney requests an award of attorney fees under 42 U.S.C. § 406(b) in the amount of \$18,302.53. Pl. Mot. 1. In the retainer agreement, the Plaintiff

agreed to pay his attorney twenty-five percent of all past-due benefits. *See* Fee Agreement, ECF No. 30-2. The requested amount of \$18,302.53 is twenty-five percent of the Plaintiff's award minus \$8,797.50 in administrative fees that the Plaintiff's counsel has already petitioned for. Pl. Mot. 2. Counsel represents that, if fees are awarded under § 406(b), he will refund to the Plaintiff the \$6,500 in EAJA fees previously awarded. *Id.*

ANALYSIS

The Plaintiff's counsel requests a payment of \$18,302.53 in attorney fees pursuant to 42 U.S.C. § 406(b). The Social Security Act allows for a reasonable fee to be awarded both for representation at the administrative level, *see* 42 U.S.C. § 406(a), and for representation before the Court, *see id.* § 406(b). *Culbertson v. Berryhill*, 139 S. Ct. 517, 520 (2019) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)). Under § 406(b), the Court may award a reasonable fee to the attorney who has successfully represented the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled. 42 U.S.C. § 406(b)(1)(A); *Gisbrecht*, 535 U.S. at 792. The reasonableness analysis considers the "character of the representation and the results the representative achieved." *Gisbrecht*, 535 U.S. at 808. Reasons to reduce an award include an attorney's unjustifiable delay or if the past-due benefits are large in comparison to the amount of time an attorney has spent on a case. *Id.* In addition, an award of EAJA fees under 28 U.S.C. § 2412 offsets an award under § 406(b). *Id.* at 796.

In this case, the requested amount of attorney fees is consistent with the contingency agreement. The proposed fee equals an effective hourly rate of approximately \$523 for the total requested § 406(b) fee award. *See* Pl. Mot. ¶ 11 (reflecting 35 attorney hours). Such an hourly rate is reasonable given the contingent nature of this case. *See, e.g., Osmun v. Comm'r of Soc.*

Sec., No. 1:16-CV-273, 2020 WL 7334271, at *3 (N.D. Ind. Dec. 14, 2020) (effective hourly rate of \$525); *Niebuhr v. Saul*, No. 18-CV-720, 2020 WL 6484488, at *1 (W.D. Wis. Nov. 4, 2020) (effective hourly rate of \$579); *Koester v. Astrue*, 482 F. Supp. 2d 1078, 1083 (E.D. Wis. 2007) (collecting cases showing that district courts have awarded attorney fees with hourly rates ranging from \$400 to \$1,500). In addition, counsel obtained a great benefit for the Plaintiff in the past-due benefits award as well as future benefits.

CONCLUSION

For the reasons stated above, the Court GRANTS the Plaintiff's Motion for Approval of Attorney Fees Pursuant to 42 U.S.C.A. Section 406(b) [ECF No. 30], AWARDS an attorney fee under 42 U.S.C. § 406(b) of \$18,302.53, and ORDERS the Plaintiff's attorney to refund the Plaintiff the \$6,500 in EAJA fees previously awarded in this case. The Court DENIES as moot the first Plaintiff's Motion for Approval of Attorney Fees Pursuant to 42 U.S.C.A. Section 406(b) [ECF No. 29].

SO ORDERED on December 9, 2022.

s/ Theresa L. Springmann

JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT